



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/23/02	Bill No:	AB 2400
Tax:	Transactions and Use	Author:	Salinas
Board Position:		Related Bills:	AB 2061 (Salinas)

BILL SUMMARY

This bill would authorize Monterey County to establish a local public finance authority for the purpose of financing the implementation of the general plan in Monterey County and impose a transactions and use tax at a rate not to exceed 1 percent, upon voter approval.

ANALYSIS

Current Law

The Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The tax rate is fixed at $1\frac{1}{4}$ percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the $1\frac{1}{4}$ percent local tax.

Under the Bradley-Burns Law, the $\frac{1}{4}$ percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed $1\frac{1}{4}$ percent.

Under the existing Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code), counties are additionally authorized to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under the Transactions and Use Tax Law, the maximum allowable combined rate of transactions and use taxes levied in any county may not exceed $1\frac{1}{2}$ percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed $1\frac{3}{4}$ and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally allows counties to levy a transactions and use tax at a rate of $\frac{1}{4}$ percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax at $\frac{1}{4}$ percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters. Section 7288.1 also allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax at a rate of $\frac{1}{4}$ percent, or multiple

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thereof, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education upon two-thirds voter approval. Finally, Section 7286.59 allows counties to levy a transactions and use tax of $\frac{1}{8}$ or $\frac{1}{4}$ percent for purposes of funding public libraries, upon two-thirds voter approval.

Currently, Monterey County does not impose a transactions and use tax. Accordingly, the combined state and local tax rate within Monterey County is 7.25 percent.

In General

Many special districts in California impose transactions and use taxes that are administered by the Board. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. The tax rate in these special taxing districts varies from district to district. Currently, the counties of Fresno, Nevada, Solano, and Stanislaus impose the lowest county-wide transactions and use tax rate of $\frac{1}{8}$ percent. San Francisco City and County has the highest combined county-wide transactions and use tax rate of $1\frac{1}{4}$ percent. The remaining districts impose rates in between these ranges. The various combined state and local tax rates and transactions and use tax rates are shown on the attached schedule.

There were several bills during last year's legislative session that authorized cities and counties to impose transactions and use taxes. AB 863 (Ch. 263, Stats. 2001) authorizes the City of West Sacramento to impose a transactions and use tax rate of $\frac{1}{4}$ or $\frac{1}{2}$ percent, upon two-thirds or majority voter approval, as determined by the ordinance proposing the tax and establishing how the revenues shall be expended. SB 685 (Ch. 474, Stats. 2001) authorizes the Fresno County Transportation Authority, subject to two-thirds voter approval, to levy a transactions and use tax at a rate of $\frac{1}{2}$ percent for an additional 30 years to finance regional transportation improvements. SB 1186 (Ch. 292, Stats. 2001) modifies the vote requirement for the existing City of Sebastopol transactions and use tax authority from a two-thirds to a majority approval by voters. The revenues generated by the tax shall be expended for general revenue purposes. SB 1187 (Ch. 285, Stats. 2001) authorizes Fresno County to establish a special purpose authority for the support of zoos, zoological facilities, and related zoological purposes in Fresno County and may impose a transactions and use tax of 0.10 percent, subject to two-thirds voter approval, to fund those purposes. The Board took a neutral position on each of these bills.

Proposed Law

This bill would add Chapter 2.61 (commencing with Section 7286.22) to Part 1.7 of Division 2 of the Revenue and Taxation Code to authorize the County of Monterey to establish a local public finance authority for the purpose of financing the implementation of the general plan in Monterey County and impose a transactions and use tax at a rate not to exceed 1 percent. This bill specifies that the tax would be levied pursuant to existing law regarding transactions and use taxes (Part 1.6, commencing with Section 7251), if all of the following conditions are met:

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- An ordinance or resolution proposing the tax is approved by a two-thirds vote of all of the membership of the board of directors of the authority;
- An ordinance or resolution proposing the tax is approved by that percentage required by law, by the qualified voters of the county voting on the measure;
- An ordinance or resolution, subject to voter approval, shall specify how the revenues from the tax will be allocated among local agencies in Monterey County and expended for the implementation of Monterey County's general plan.

This bill also specifies that the transactions and use tax imposed pursuant to this chapter may not become operative before January 1, 2004.

This bill also includes findings and declarations that a special law is necessary because of the uniquely difficult fiscal pressures being experienced by the County of Monterey in providing essential public services related to implementing Monterey County's general plan.

Background

Voters in Monterey County had passed a measure to impose a transactions and use tax at a rate of ½ percent. The Monterey County Public Repair and Improvement Authority Tax was in effect from April 1, 1990 through September 30, 1992. Subsequently, this tax was challenged by the Monterey Peninsula Taxpayers Association. In the decision, *Monterey Peninsula Taxpayers Association v. County of Monterey* (1992) 8 Cal.App.4th 1520 this tax was found to be unconstitutional. The California Supreme Court ruled that a tax adopted under Revenue and Taxation Code Section 7285.5 was in violation of Proposition 13. Revenue and Taxation Code Section 7285.5 (subsequently amended) authorized a county to establish an authority for specific purposes that could levy a transactions and use tax, subject to two-thirds vote of the authority and a majority voter approval. The court found that a tax adopted under this section, without a two-thirds vote of the electorate, violated Proposition 13 which allowed impositions of special taxes by special districts only if the tax was approved by at least two-thirds of the voters. Therefore, Section 7285.5 was amended (AB 1123, Ch.251, 2001) to add language requiring two-thirds voter approval of a special purpose tax.

Additionally, the decision, *Rider v. County of San Diego* (1991) 1 Cal.4th 1., and subsequent voter approval of Proposition 218 in 1996, clarified that a tax levied by a special-purpose agency is a special tax, requiring two-thirds voter approval.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the County of Monterey to enable the county to raise additional revenue for providing essential public services related to implementing the county's general plan.
2. **Suggested technical amendment – Ordinance vs. Resolution.** This bill provides that the County of Monterey Local Public Finance Authority may levy a tax if an ordinance or resolution proposing such tax is approved by the board of directors of the authority and by the qualified voters in Monterey County. However, current statutes of the Revenue and Taxation Code require that an ordinance, not a

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resolution, be passed. Sections 7285, 7285.5 and 7288.3 were amended to clarify that an ordinance, not a resolution, is necessary for the adoption of the tax. Prior to these amendments, a county could adopt a resolution of intent to levy a transactions and use tax, obtain voter approval of the resolution, but then neglect to enact an ordinance to levy the tax. Without an ordinance detailing the specifics of the proposal, the tax could not go into effect. This omission could not be detected until the county submitted the required documents to the Board of Equalization to enable the Board to enter into a contract to administer the tax. Consequently, the ordinance would have to be enacted at the last minute, sometimes risking a delay in implementing the tax. Therefore, it is recommended that the references to resolution be deleted from the bill.

3. **Suggested technical amendment – operative date of new tax.** This bill provides that the imposition and collection of any tax upon voter approval shall commence no sooner than the first day of the first calendar quarter commencing not more than 90 days after the results of the election are certified by the county registrar. However, Section 7265 states that no ordinance adopted pursuant to this part shall be operative on other than the first day of a calendar quarter, or prior to the first day of the first calendar quarter, commencing more than 110 days after the adoption of the ordinance. Section 7288.3, subdivision (d), states in part that the imposition and collection of any tax approved by the voters at an election held pursuant to this chapter shall commence no sooner than the first day of the first calendar quarter commencing more than 90 days after the election results are certified by the county registrar. These time limits were put into the statutes at the direct request of the Board members because of the length of time it takes to efficiently commence a new tax. Tax returns must be changed, special notices must be prepared and mailed with tax returns, notice of the new tax rates must be published in the quarterly tax information bulletins and other Board publications, and more. Without sufficient notice to the taxpayers, the new tax will not be properly collected and reported to the Board. For these reasons, it is recommended that, under subdivision (c)(2) of this bill, the word not before the phrase “more than 90 days” be deleted.
4. **Suggested technical amendment - language referencing voter approval requirement is vague.** This bill provides that the County of Monterey may establish a local public finance authority for the purpose of financing the implementation of the general plan in Monterey County. This bill further provides that the ordinance or resolution, subject to voter approval, shall specify how the revenues from the tax are to be allocated among local agencies in Monterey County for the implementation of that county’s general plan. Therefore, the provisions in this bill establish an authority to levy a transactions and use tax for special purposes. A special purpose tax requires a two-thirds voter approval. However, voter approval requirement in this bill is vague. Under subdivision (b)(3), it states that “the ordinance or resolution proposing the tax is approved by that percentage as required by law” It is recommended that this bill add language clarifying that the voter requirement is a two-thirds approval of the voters.
5. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among

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the various communities of the state. The varying rates between cities prior to the enactment of this uniform law created a very difficult situation for retailers, confused consumers, and created fiscal problems for the cities and counties. A retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, a retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

The Transactions and Use Tax Law is becoming as complicated as the local tax laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Currently, fifteen cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

6. **Multiplicity of tax rates is gaining national attention.** The Streamlined Sales Tax Project is a nationwide effort to simplify sales and use taxes in all states. Congress is currently reviewing this and other sales tax simplification efforts. Some proposals would expand states' rights to impose a use tax collection duty in exchange for certain simplifications, including the imposition of a single statewide sales and use tax rate. Allowing more cities to impose transactions and use taxes moves California away from national efforts concerning sales and use tax simplicity.
7. **Related Legislation.** Assembly Bill 2061 (Salinas) would authorize the City of Salinas, (located in Monterey County) subject to voter approval, to levy a transactions and use tax. The Board voted to be neutral on AB 2061.

COST ESTIMATE

This bill does not increase administrative costs to the Board because it only authorizes the County of Monterey to impose a tax. However, if the county passed an ordinance, it would be required to contract with the Board to perform functions related to the ordinance, and reimburse the Board for its preparation costs to administer the ordinance as well as the ongoing costs for the Board's services in actually administering the ordinance. Based on the Board's experience with similar special-purpose taxes, it is estimated that the one-time preparatory costs could range between \$15,000 and \$40,000. Under Section 7273 of the Revenue and Taxation Code, the estimated ongoing assessed administrative costs could not exceed \$759,000 for the one percent rate (\$50.6 million X 1.5).

As stated above, Section 7273 requires the Board to cap administrative costs. Because of this requirement, the Board is limited in the amount it may charge special taxing

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jurisdictions. Thus, any shortfall that could result from actual costs exceeding the amount the Board could charge, would have an impact on the General Fund. For 2001-02, it is estimated that the State General Fund will absorb \$1.5 million as a result of the cap limitations on administrative cost recovery.

For Monterey County, it is not expected that the administrative costs would exceed the cap. However, for information purposes, if Monterey County were to impose a tax rate of one percent, the assessed administrative costs would be capped at 1.5 percent of the revenue generated. This means that the estimated ongoing assessed administrative costs could not exceed \$759,000 for the one percent rate (\$50.6 million X 1.5).

REVENUE ESTIMATE

Taxable sales in the County of Monterey during the 2000-01 fiscal year were \$5,058.4 million. A transactions and use tax rate not to exceed 1 percent (using multiples of 1/4 percent), in the County of Monterey would raise the following amounts annually:

<u>Rate</u>	<u>Revenue</u>
1/4 %	\$ 12.6 million
1/2 %	\$ 25.3 million
3/4 %	\$ 37.9 million
1 %	\$ 50.6 million

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Attachment 1
California Sales, Transactions and Use Tax Rates by County
Effective 01/01/02

01 Alameda	
State	6.00
Local	1.25
ACTA#	0.50
ACTI#	0.50
BART	0.50
	<hr/> 8.25

02 Alpine	
State	6.00
Local	1.25
	<hr/> 7.25

03 Amador	
State	6.00
Local	1.25
	<hr/> 7.25

04 Butte	
State	6.00
Local	1.25
	<hr/> 7.25

05 Calaveras	
State	6.00
Local	1.25
	<hr/> 7.25

06 Colusa	
State	6.00
Local	1.25
	<hr/> 7.25

07 Contra Costa	
State	6.00
Local	1.25
CCTA	0.50
BART	0.50
	<hr/> 8.25

08 Del Norte	
State	6.00
Local	1.25
	<hr/> 7.25

09 El Dorado	
State	6.00
Local	1.25
PLPS*	0.25
	<hr/> 7.50

10 Fresno	
State	6.00
Local	1.25
FCTA	0.50
FCPL	0.125
CCPS*	0.30
	<hr/> 8.175

11 Glenn	
State	6.00
Local	1.25
	<hr/> 7.25

12 Humboldt	
State	6.00
Local	1.25
	<hr/> 7.25

13 Imperial	
State	6.00
Local	1.25
IMTA	0.50
CXHD*	0.50
	<hr/> 8.25

14 Inyo	
State	6.00
Local	1.25
INRC	0.50
	<hr/> 7.75

15 Kern	
State	6.00
Local	1.25
	<hr/> 7.25

16 Kings	
State	6.00
Local	1.25
	<hr/> 7.25

17 Lake	
State	6.00
Local	1.25
CLPS*	0.50
	<hr/> 7.75

18 Lassen	
State	6.00
Local	1.25
	<hr/> 7.25

19 Los Angeles	
State	6.00
Local	1.25
LATC	0.50
LACT	0.50
AMHC*	0.50
	<hr/> 8.25

20 Madera	
State	6.00
Local	1.25
MCTA	0.50
	<hr/> 7.75

21 Marin	
State	6.00
Local	1.25
	<hr/> 7.25

22 Mariposa	
State	6.00
Local	1.25
MCHA	0.50
	<hr/> 7.75

23 Mendocino	
State	6.00
Local	1.25
	<hr/> 7.25

24 Merced	
State	6.00
Local	1.25
	<hr/> 7.25

25 Modoc	
State	6.00
Local	1.25
	<hr/> 7.25

26 Mono	
State	6.00
Local	1.25
	<hr/> 7.25

27 Monterey	
State	6.00
Local	1.25
	<hr/> 7.25

28 Napa	
State	6.00
Local	1.25
NCFP	0.50
	<hr/> 7.75

29 Nevada	
State	6.00
Local	1.25
NVPL	0.125
TRSR*	0.50
	<hr/> 7.375

30 Orange	
State	6.00
Local	1.25
OCTA	0.50
	<hr/> 7.75

31 Placer	
State	6.00
Local	1.25
	<hr/> 7.25

32 Plumas	
State	6.00
Local	1.25
	<hr/> 7.25

Attachment 1
California Sales, Transactions and Use Tax Rates by County
Effective 01/01/02

33 Riverside	
State	6.00
Local	1.25
RCTC	0.50
	<u>7.75</u>

34 Sacramento	
State	6.00
Local	1.25
STAT	0.50
	<u>7.75</u>

35 San Benito	
State	6.00
Local	1.25
	<u>7.25</u>

36 San Bernardino	
State	6.00
Local	1.25
SBER	0.50
	<u>7.75</u>

37 San Diego	
State	6.00
Local	1.25
SDTC	0.50
	<u>7.75</u>

38 San Francisco	
State	6.00
Local	1.25
SFTA	0.50
SFPF	0.25
BART	0.50
	<u>8.50</u>

39 San Joaquin	
State	6.00
Local	1.25
SJTA	0.50
	<u>7.75</u>

40 San Luis Obispo	
State	6.00
Local	1.25
	<u>7.25</u>

41 San Mateo	
State	6.00
Local	1.25
SMTA	0.50
SMCT	0.50
	<u>8.25</u>

42 Santa Barbara	
State	6.00
Local	1.25
SBAB	0.50
	<u>7.75</u>

43 Santa Clara	
State	6.00
Local	1.25
SCCT	0.50
SCGF	0.50
	<u>8.25</u>

44 Santa Cruz	
State	6.00
Local	1.25
SCMT	0.50
SZPL	0.25
	<u>8.00</u>

45 Shasta	
State	6.00
Local	1.25
	<u>7.25</u>

46 Sierra	
State	6.00
Local	1.25
	<u>7.25</u>

47 Siskiyou	
State	6.00
Local	1.25
	<u>7.25</u>

48 Solano	
State	6.00
Local	1.25
SLPL	0.125
	<u>7.375</u>

49 Sonoma	
State	6.00
Local	1.25
SCOS	0.25
	<u>7.50</u>

50 Stanislaus	
State	6.00
Local	1.25
STCL	0.125
	<u>7.375</u>

51 Sutter	
State	6.00
Local	1.25
	<u>7.25</u>

52 Tehama	
State	6.00
Local	1.25
	<u>7.25</u>

53 Trinity	
State	6.00
Local	1.25
	<u>7.25</u>

54 Tulare	
State	6.00
Local	1.25
	<u>7.25</u>

55 Tuolumne	
State	6.00
Local	1.25
	<u>7.25</u>

56 Ventura	
State	6.00
Local	1.25
	<u>7.25</u>

57 Yolo	
State	6.00
Local	1.25
WOGT*	0.50
	<u>7.75</u>

58 Yuba	
State	6.00
Local	1.25
	<u>7.25</u>

*ACTA expired 3/31/02 and ACTI became operative 4/1/02. The tax rate remained unchanged at 8.25%.
The tax in this district is not imposed throughout the county; it is a citywide tax. The county total includes the citywide district tax.